

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-456

MATTHEW COSTLEY

APPELLANT

V.

ARKANSAS DEPARTMENT OF
HUMAN SERVICES and MINOR
CHILDREN

APPELLEES

Opinion Delivered 17 June 2009

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT,
[NO. JJN2006-2218]

HONORABLE WILEY A. BRANTON
JR., JUDGE

AFFIRMED

D.P. MARSHALL JR., Judge

Matthew Costley's attorney originally filed a no-merit brief and a motion to withdraw in this parental-rights termination case. We denied the motion and asked counsel to argue the issue of whether the Arkansas Department of Human Services properly served Costley with the dependency-neglect petition and summons that started these proceedings. *Costley v. Ark. Dep't of Human Servs.*, CA08-456, slip op. at 3 (Ark. App. 10 Dec. 2008). After reviewing counsel's merit brief, we conclude that DHS served Costley in accordance with Arkansas law.

Costley was a man of many addresses. He was in jail six to eight times during a dozen years. Costley listed at least five places in Little Rock and Hot Springs where

he stayed for varying periods of time when he was free on bail or on parole. By his own testimony, he “bounced around” from house to house. At the time of the termination hearing, Costly had not had any meaningful contact with his children in more than a year and had not lived with them in more than two years.

In November 2006, DHS removed the children from their mother’s household and petitioned the circuit court for emergency custody. DHS served the petition on Costley by leaving a copy with his grandmother in Little Rock. Costley appeared in court eight months later and claimed he had just received his first official notice of the case. The court found that Costley was well-acquainted with the proceedings and that DHS made good service on Costley by leaving the original petition with Costley’s grandmother. After a final hearing, the court terminated Costley’s parental rights in J.C., C.C., V.C., and R.C. Costley now contends that the so-called “substituted service” on his grandmother did not meet the requirements of Arkansas Rule of Civil Procedure 4.

The Juvenile Code requires DHS to follow the Arkansas Rules of Civil Procedure when serving a parent with the dependency-neglect petition and hearing notice. Ark. Code Ann. § 9-27-312 (Repl. 2008). Rule 4(d)(1) permits a plaintiff to serve a defendant by leaving suit papers at the defendant’s “dwelling house or usual place of abode” with a person residing there who is at least age fourteen. Costley’s

grandmother was older than age fourteen. The dispute is whether her residence qualified as Costley's dwelling house or usual place of abode. It did.

Costley told the court that he was "paroled out" to his father's house in Hot Springs on the date that DHS served the petition on his grandmother in Little Rock. But Costley also agreed that he generally resided with his grandmother. He testified that he regarded himself as having two addresses: his grandmother's house and his father's house. Costley made several places his home, including his grandmother's residence. Her home, as much as any of Costley's living quarters, constituted his permanent, fixed home and the place to which he intended to return when he was absent. *State Office of Child Support Enforcement v. Mitchell*, 330 Ark. 338, 344, 954 S.W.2d 907, 910 (1997).

We therefore hold that DHS's service on Costley was valid. And we affirm the termination order.

PITTMAN and HENRY, JJ., agree.